

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

KleinBank,

Civil No. 09-3065 (DWF/LIB)

Plaintiff,

v.

ORDER

Raymond W. Haugland, Yvonne J. Haugland,
John Doe, Mary Rowe, and United States of
America Department of the Treasury,
Internal Revenue Service,

Defendants,

and

United States of America, Department of the Treasury,
Internal Revenue Service,

Counter Claimant,

v.

KleinBank,

Counter Defendant.

David R. Mortensen, Esq., and Eric D. Cook, Esq., Wilford & Geske, P.A., counsel for Plaintiff.

Daniel A. Beckman, Esq., Gislason & Hunter LLP, counsel for Defendants Raymond W. Haugland and Yvonne J. Haugland.

David W. Fuller, Assistant United States Attorney, United States Attorney's Office, counsel for Defendant United States of America Department of the Treasury.

The undersigned United States District Judge reviewed the parties Stipulation dated January 4, 2011. David R. Mortensen, Esq., and Eric D. Cook, Esq., Wilford & Geske, P.A., Woodbury, MN, are the attorneys of record for Plaintiff/CounterDefendant KleinBank (“**KleinBank**”); Daniel A. Beckman, Esq., Gislason & Hunter, LLP, Minneapolis, MN, is the attorney of record for Defendants Raymond W. Haugland and Yvonne J. Haugland (“**Hauglands**”); and David Fuller, Esq., Assistant United States Attorney, United States Attorney’s Office, is the attorney of record for the United States of America, Department of the Treasury, Internal Revenue Service (“**Government**”).

Based on the Stipulation of the parties submitted herewith, the Court makes the following findings of fact:

1. KleinBank commenced this action on or about September 25, 2009.
2. The Hauglands are the fee owners of real property located in Aitkin County commonly known as 22003 – 517th Lane, McGregor, MN 55760-1440 (“**Property**”);
3. On December 29, 2003, the Hauglands executed and delivered a fully enforceable Home Equity Credit Agreement (“**Note**”) to Eagle Valley Bank, N.A., in the original principal amount of \$340,000.00.
4. To secure repayment of the indebtedness evidenced by the Note, the Hauglands simultaneously executed and delivered to Eagle Valley Bank, N.A. a Mortgage, (herein “**Mortgage**”), covering the Property in Aitkin County, Minnesota, which Mortgage was duly filed for record in the office of the Aitkin County Recorder on January 22, 2004, as Document No. 355280.

5. KleinBank is the mortgagee of the fully enforceable Mortgage by virtue of an Assignment of Mortgage dated August 14, 2007, and filed with the Aitkin County Recorder on September 4, 2007, as Document 383404.

6. KleinBank requested in this matter that its Mortgage dated December 29, 2003 and recorded with the Aitkin County Recorder on January 22, 2004, as Document No. 355280 be reformed to include the full legal description for the Property.

7. KleinBank also requested that its lien interest in the property be senior and prior to the federal tax lien of the Government, which was recorded with the Aitkin County Recorder on March 4, 2009, as Document No. 392573.

8. The parties participated in litigation regarding the issues in this matter, specifically with respect to the priority of the parties' respective lien interests.

9. The Court heard the summary judgment arguments of KleinBank and the Government at hearing on November 12, 2010.

10. The Court issued its decision in this matter, dated December 29, 2010, and resolved the issue of priority of the interests of KleinBank and the Government.

11. The Court did not resolve the issue of the reformation of the legal description in KleinBank's Mortgage, and suggested the parties resolve the issue via stipulation as it appears that there is no dispute.

12. It was intended by the Hauglands to pledge as security the entire Property in connection with the Note, and that the Mortgage should have incorporated the complete legal description as set forth below.

13. In light of the Court's Order regarding the issue of priority, the parties now desire to resolve the remaining issue of the reformation of the Mortgage by entering into the Stipulation, and request that the Court enter Judgment in this matter.

Based upon the foregoing findings, the Stipulation of the parties, as well as the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. The legal description contained in the Mortgage dated December 29, 2003, and filed with the Aitkin County Recorder on January 22, 2004, as Document No. 355280 is hereby reformed, as of October 12, 2009, to be as follows:

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota to be described as follows:

Commencing at a point on the south line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04 feet; thence South along the Southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to a point hereby designated and hereafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet to the actual point of beginning of the following tract of land to be described; thence South 16 degrees 27 minutes 56 seconds East a distance of 213 feet, more or less, to the shoreline of Big Sandy Lake, thence Northeasterly along said shoreline to its intersection with a line bearing South 79 degrees 56 minutes 57 seconds East from the actual point of beginning; thence North 79 degrees 56 minutes 57 seconds West a distance of 222 feet, more or less, to the actual point of beginning. It being the intent of this description that the southerly extension of the easterly line of said Lot 30 has an assigned bearing of South.

Containing 0.6 acres, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B of

Document No. 308953. Subject to easements, reservations, restrictions or ordinances now of record.

AND

That part of Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota to be described as follows:

Commencing at a point on the south line of the Plat of Sandy Lake Beach where it intersects the southerly extension of the easterly line of Lot 30 of said Plat; thence Easterly along said South line of said plat a distance of 509.04 feet; thence South along the Southerly extension of the westerly line of Lot 19 of said plat a distance of 125.00 feet; thence South 00 degrees 54 minutes 01 seconds West a distance of 383.94 feet to a point hereby designated and hereafter referred to as POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; to the actual point of beginning of the following tract of land to be described; thence South a distance of 100 feet; thence South 79 degrees 56 minutes 57 seconds East a distance of 222 feet more or less, to the shoreline of Big Sandy Lake; thence Northerly along said shoreline a distance of 102 feet, more or less, to its intersection with a line bearing South 80 degrees 53 minutes 37 seconds East from the actual point of beginning; thence North 80 degrees 53 minutes 37 seconds West a distance of 242.68 feet, more or less, to the actual point of beginning. It being the intent of this description that the Southerly extension of the easterly line of said Lot 30 has an assigned bearing of South.

Containing 0.6 acres, more or less. Subject to and together with an easement for road purposes as described on the attached Exhibit B of Document No. 308953. Subject to easements, reservations, restrictions or ordinances now of record.

AND

A 33 foot wide perpetual easement for road purposes over, under and across the following described property:

Government Lot 3 and Government Lot 4 of Section 1, Township 49, Range 24, Aitkin County, Minnesota.

Said easement being 16 ½ feet to the right and 16 ½ feet to the left of the following centerline to be described:

Beginning at the before described POINT A; thence North 83 degrees 54 minutes 29 seconds East a distance of 194.01 feet; thence South 83 degrees 56 minutes 41 seconds East a distance of 373.00 feet; thence South a distance of 100.00 feet; thence South 16 degrees 27 minutes 56 seconds East a distance of 30.00 feet; thence North 16 degrees 27 minutes 56 seconds West a distance of 30.00 feet; thence North a distance of 100.00 feet; thence North 83 degrees 56 minutes 41 seconds West a distance of 373.00 feet; thence North 05 degrees 46 minutes 49 seconds East a distance of 221.40 feet; thence North 06 degrees 30 minutes 31 seconds West a distance of 279.36 feet to the south line of the plat of Sandy Lake Beach and there said centerline terminating. It is the intent of this description for the easterly and westerly lines of said easement to be lengthened or shortened to intersect with the south line of said plat.

2. The Memorandum and Order of the Court dated December 29, 2010, which resolves the Government's Counterclaim, is hereby incorporated herein, and the agreement of the parties to reform the mortgage shall not be inconsistent with the Court's determination of priority or otherwise serve to alter the Court's decision.

3. The recording of Judgment in this matter with the Aitkin County Recorder shall serve to reform the Mortgage without further action by the parties.

4. That fees and costs shall not be awarded to any party.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 3, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge